

The House Committee on Judiciary Non-civil offers the following substitute to SB 316:

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated,  
2 relating to obscenity and related offenses, so as to provide for affirmative defenses for the  
3 offense of distributing obscene materials; to change provisions relating to the crime of  
4 electronically furnishing obscene material to minors; to provide that a person commits this  
5 crime if such person furnishes to an individual whom the person knows or should have  
6 known is a minor any product which contains or reveals or gives access to any user name,  
7 log-in code, password, number, or other information which enables a person to access one  
8 or more Internet sites containing certain material which is harmful to minors in that it appeals  
9 to and incites prurient interest; to provide for related matters; to provide for an effective date  
10 and applicability; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to  
14 obscenity and related offenses, is amended by striking subsection (e) of Code Section  
15 16-12-80, relating to the affirmative defense for the offense of distributing obscene  
16 materials, and inserting in its place a new subsection to read as follows:

17 "(e) It is an affirmative defense under this Code section that selling, lending, renting,  
18 leasing, giving, advertising, publishing, exhibiting, or otherwise disseminating  
19 ~~dissemination~~ of the material was restricted to:

20 (1) A person associated with an institution of higher learning, either as a member of the  
21 faculty or a matriculated student, teaching or pursuing a course of study related to such  
22 material; or

23 (2) A person whose receipt of such material was authorized in writing by a licensed  
24 medical practitioner or psychiatrist."

**SECTION 2.**

Said article is further amended by striking Code Section 16-12-100.1, relating to the crime of electronically furnishing obscene material to minors, and inserting in its place a new Code section to read as follows:

"16-12-100.1.

(a) As used in this Code section, the term:

(1) 'Bulletin board system' means a computer data and file service that is accessed by telephone line to store and transmit information.

(2) 'CD-ROM' means a compact disc with read only memory which has the capacity to store audio, video, and written materials and is used by computers to reveal the above-said material.

(3) 'Electronically furnishes' means:

(A) To make available by electronic storage device, including floppy disks and other magnetic storage devices, or by CD-ROM; or

(B) To make available by allowing access to information stored in a computer, including making material available by operating a computer bulletin board.

(4) 'Harmful to minors' means that quality of description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(A) Taken as a whole, predominantly appeals to the prurient, shameful, or morbid interest of minors;

(B) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(C) Is, when taken as a whole, lacking in serious literary, artistic, political, or scientific value for minors.

(5) 'Minor' means an unmarried person younger than 18 years of age.

(5.1) 'Prepaid Internet access product' means any product which contains or reveals or gives access to any user name, log-in code, password, number, or other information which enables a person to access one or more Internet sites not otherwise accessible without payment or proof of age or both; and without limiting the generality of the foregoing this term specifically includes any product commonly referred to as a PPP card or any substantially equivalent product.

(6) 'Sadomasochistic abuse' means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(7) 'Sexual conduct' means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas, or buttocks of the human male or female or the breasts of the

1 female, whether alone or between members of the same or opposite sex or between  
2 humans and animals in an act of apparent sexual stimulation or gratification.

3 (8) 'Sexual excitement' means the condition of human male or female genitals or the  
4 breasts of the female when in a state of sexual stimulation.

5 (b) A person commits the crime of electronically furnishing obscene materials to minors  
6 if:

7 (1) Knowing or having good reason to know the character of the material ~~furnished~~, the  
8 person either furnishes to an individual whom the person knows or should have known  
9 is a minor any prepaid Internet access product which would enable the minor to access  
10 any of the following material over the Internet or electronically furnishes to an individual  
11 whom the person knows or should have known is a minor any of the following material:

12 (A) Any picture, photograph, drawing, or similar visual representation or image of a  
13 person or portion of a human body which depicts sexually explicit nudity, sexual  
14 conduct, or sadomasochistic abuse and which is harmful to minors; or

15 (B) Any written or aural matter that contains material of the nature described in  
16 subparagraph (A) of this paragraph or contains explicit verbal descriptions or narrative  
17 accounts of sexual conduct, sexual excitement, or sadomasochistic abuse;

18 (2) The offensive portions of the material electronically furnished to the minor are not  
19 merely an incidental part of an otherwise nonoffending whole;

20 (3) The material furnished to the minor, taken as a whole, lacks serious literary, artistic,  
21 political, or scientific value; and

22 (4) The material furnished to the minor, taken as a whole, is harmful to minors in that it  
23 appeals to and incites prurient interest.

24 (c) Any person who violates this Code section shall be guilty of a misdemeanor of a high  
25 and aggravated nature."

### 26 SECTION 3.

27 This Act shall become effective upon its approval by the Governor or upon its becoming law  
28 without such approval and shall apply with respect to offenses committed on or after that  
29 effective date. Prior offenses shall continue to be governed by prior law.

### 30 SECTION 4.

31 All laws and parts of laws in conflict with this Act are repealed.